IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 26..11..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P. No.34589 of 2007
and
M.P. No. 1 of 2007

Manuelmony Matriculation School
Rep. by its Secretary
No. 4 North Mada Street
Thiruvanmiyur
Chennai .. Petitioner

vs.

1. The Principal Labour Court
High Court Campus
Chennai - 104

2. N.Rajendran .. Respondents

Petition filed under Article 226 of the Constitution of India seeking for issue of writ of Certiorari calling for the records relating to the order of the first respondent in I.A. No. 278/2007 in I.D. No. 83 of 2005 dated 15.10.2007 and quash the same as it is against the code of regulation for Matriculation Schools Tamil Nadu.

For Petitioner : Mr. K.M.Vijayan, SC
for Mr.S.Ravichandran
For Respondent : Mr.Pa. Kadirvel, GA

ORDER

The petitioner is a Matriculation School, represented by its Secretary and the order dated 15.10.2007 passed by the first respondent Labour Court in I.A. No. 278 of 2007 in I.D. No. 83 of 2005 is under challenge in this writ petition.

2. In the said order dated 15.10.2007, the first respondent Labour Court rejected the plea made by the petitioner School Management and held that the Labour Court has jurisdiction to entertain the Industrial Dispute raised by the second respondent under Section 2(A)(2) of the Industrial Disputes Act [for short, 'I.D. Act'].

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3. I have heard the arguments of Mr.K.M.Vijayan, learned Senior Counsel leading Mr.S.Ravichandran, learned counsel appearing for the petitioner and have perused the records.

4. The writ petition is filed only against the preliminary order passed by the Labour Court and at this stage, it is not necessary to entertain a writ petition under Article 226 of the Constitution of India in view of the self-imposed restriction placed upon this Court. The Supreme Court vide its decision reported in 1975 (2) SCC 661 [Cooper Engineering Limited v. P.P. Mundhe] has held that the Court should not baulk at the proceedings of the Labour Court at every stage and should not stall the proceedings. On this short ground, the writ petition is liable to be dismissed.

5. However, Mr. K.M.Vijayan, learned Senior Counsel leading Mr. S. Ravichandran, learned counsel appearing for the petitioner submitted that it is only discretionary for the Court not to hear cases at the preliminary stage whereas in the present case, the jurisdictional issue goes to the root of the matter and, therefore, they are entitled to raise the issue at this stage.

6. In fact, when the petitioner earlier filed a writ petition before this Court in W.P. No. 15371 of 2005, the same was dismissed vide order dated 05.4.2006. In that petition, the School Management filed a petition seeking for writ of Declaration declaring that the provisions of the I.D. Act are not applicable to the Private Schools run under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 [for short, 'Private Schools Act']. As against the said order, the petitioner filed appeal being W.A. No. 567 of 2006, which came to be dismissed by a Division Bench of this Court vide judgment dated 25.7.2007 and in paragraph 6 of the judgment, it was observed as follows:

Para 6: "Having considered the respective submissions and the scope of the issue involved in the case on hand, we are convinced that by setting aside the order of the learned single Judge and vacating all observations contained therein, the appellant is directed to raise the jurisdictional issue raised in this writ petition before the first respondent itself by filing appropriate pleadings. On such issue being raised, the first respondent is directed to decide the said issue as a preliminary issue before going into the merits of the dispute and pass orders on that preliminary issue within two months from the date of receipt of a copy of this order."

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Therefore, the learned Senior Counsel stated that since they went before the Labour Court as per the direction of the Division Bench of this Court, they are entitled to agitate the issue even at the preliminary stage.

7. Learned Senior Counsel submitted the following points for consideration:

(a) Though the second respondent may be a workman within the meaning of Section 2(s) of the I.D. Act, as he is only a non-teaching staff holding the post of Chief Accountant in the petitioner School, the provisions of the I.D. Act are not applicable to any Private School covered by Section 2(7) of the Private Schools Act.

(b) The petitioner School, even though a Matriculation School, is also a School and it is not covered by the Matriculation Code applicable to Matriculation Schools. But it is a Private School in terms of Section 2(7)(c) of the Private School Act.

(c) The correctness of the judgment of the learned Judge reported in 2002 W.L.R. 688 [Tamil Nadu Matriculation and CBSE School Teachers' Association v. State of Tamil Nadu and others] holding that the Private Schools Act will not apply to the Matriculation Schools, has been referred to a Division Bench and, therefore, it is not final and binding.

(d) The decision of this Court, in identical circumstances, rendered in W.P. (MD) No. 4926 of 2006 [The Manager, S.Chattanatha Karayalar College of Pharmacy. Tenkasi v. The Presiding Officer and another], disposed on 03.10.2007, is applicable only to Private Colleges and there is a difference between the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Private Schools Act.

8. Taking the last submission that the order of this Court in W.P. (MD) No. 4926 of 2006 (cited supra) will not apply to the present case, the learned Senior Counsel submitted that in that case, this Court did not deal with the similar provisions to Section 28 of the Private Schools Act and it only dealt with similar provisions under Section 24 and, more specifically, with Section 52 of the Private Colleges Act. This Court is unable to agree with the said submission because even in Private Colleges Act, Section 24, which is parimateria with Section 28 of the Private Schools Act, is available. But the learned Senior Counsel stated that under Section 24(3) of the Private Colleges Act, minority institutions are excluded, whereas under the Private Schools Act, there is no such exclusion for any minority institution.

9. The learned Senior Counsel failed to note that Sections 22 to 26 of the Private Schools Act were held in-applicable to minority institution by a Division Bench of this Court in W.P. No. 4478 of 1974, etc. batch cases, disposed on 24.9.1976. When the State went on appeal against the said judgment, the Supreme Court remitted the

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matter for fresh disposal by this Court in the light of the decision reported in (2002) 8 SCC 481 [T.M.A. Pai Foundation and others v. State of Karnataka and others]. But in the same remittal order, the Supreme Court has held that until such time the Court determines the applicability of these provisions, status quo will prevail, which only means that the provisions relating to appeals will not apply to minority institutions. Once it is conceded that the appeal provisions are not applicable to minority institution, then it is clear that the non-teaching staff working in the minority institutions will be allowed to move the provisions of the I. D. Act in the light of the judgment reported in 1987 (4) SCC 691 [Christian Medical College Hospital Employees' Union and another v. Christian Medical College Vellore Association and others]. In fact, in that decision, the Supreme Court while discussing the application of the I. D. Act regarding the said Act, observed in paragraphs 11 and 12 as follows:

Para 11: "..... The Act came to be passed in the year 1947 with the object of bringing into existence a machinery for investigation and settlement of industrial disputes between employers and workmen in accordance with the decisions of the International Labour Organisation. The Act provides for a machinery for collective bargaining. The object of industrial adjudication has, therefore, been to be a countervailing force to counteract the inequalities of bargaining power which is inherent in the employment relationship. In one of the commentaries on the Act the need for and the character of industrial adjudication is described as follows:

> "The law Governing industrial relations is one of the vitally important branches of the law - the legal system on which depends the social and economic security of a very large majority. "The parties to the industrial disputes present an infinite permutations of attitudes" on economics, politics and human relations. General consensus on the methods of resolving them is beyond reach. The core of modern industrial law, therefore, consists of the problems dealing with the conflict arising between the industrial employers and their employees relating to employment and social security. The study of industrial law, therefore, necessarily concerns itself with the struggle of industrial workmen for security. It is the security of job, the minimum standard of living, of his future and that of his children and conversely the fear of insecurity which bedevil the worker. In other words, security is the keystone in dealing with the industrial relations between the industrial employers and their workers. The industrial worker, therefore, is the 'focal point' of any legal enquiry in the

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industrial relations. In the words of Prof. Forkosch, "the sociologist may see the worker as a human being caught in congeries of frustrations, complexes and urges - a mind that cannot cope with the baffling contradictions of the modern society". "There is", therefore, as Prof. Otto Kahn-Freund points out "everywhere a constant need for finding a judicium finium regundorum between collective bargaining and legislation of all kinds as instruments for the regulation of conditions of employment - wages and hours, holidays and pensions, health, safety and welfare, and even, increasingly, social security". [See O.P. Malhotra: The Law of Industrial Disputes, Fourth Edn., Vol. I, (1985) - Introduction, Page XX.]

Para 12: Section 2(k) of the Act defines an 'industrial dispute' as any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. The Act provides for the constitution of works committees in industrial establishments employing 100 workmen or more and they are charged with the duty of removing causes of friction between the employer an d workmen in the day-to-day working of the establishment and promoting measures for securing amity and good relations between them. Industrial peace is most enduring where it is founded on voluntary settlement, and the works committees are entrusted with the duty of providing a machinery for the settlement of disputes. Section 12 of the Act provides for the appointment of Conciliation Officers in order to negotiate between the managements and their workmen and to bring about settlement if possible. If the conciliation proceedings fail, the Conciliation Officer has to make a report to the appropriate Government accordingly. A reference to an Industrial Tribunal of a dispute under Section 10 of the Act is made where both parties to an industrial dispute apply for such reference or where the appropriate Government considers it expedient so to do. An award of a Tribunal may be in operation for a period of one year subject to the provisions of Section 19 of the Act. The power to refer disputes to Industrial Tribunals and enforce their awards is an essential corollary to the obligation that lies on the Government to secure conclusive determination of the disputes with a view to redressing the legitimate grievances of the parties thereto, such obligation arising from the

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imposition of restraints on the rights of strike and lock-out, which must remain inviolate, except where considerations of public interest override such rights. The Industrial Tribunals or Labour Courts constituted under the Act are presided over by persons having judicial experience such as a person who is or has been a Judge of the High Court or who has been for a period not less than three years a District Judge or an Additional District Judge or a person who has not less than five year's service as Presiding Officer of a Labour Court constituted under any law for the time being in force or who holds a degree in law of a University established by law in any part of India and is holding or has held an office not lower in rank than that of Assistant Commissioner of Labour under the State Government for not less than ten years. The Presiding Officer of a Labour Court should also possess substantially the same qualifications and they are set out in Section 7 of the Act. Section 9-A of the Act, which is one of the sections the applicability of which to a minority educational institution is questioned, provides that no employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to the Act shall effect such change without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or within twenty-one days of giving such notice, except in certain cases which are mentioned in the proviso thereto. This section was introduced since there was a persistent demand that notice should be given whenever it was proposed to make any change in the conditions of service of the workmen. Section 11-A of the Act confers powers on the Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge of dismissal of workmen. It provides that where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudicational proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. On the basis of the materials on record, the Tribunal is empowered

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to pass an appropriate order under Section 11-A of the Act. Section 33 of the Act provides that the conditions of service etc. of the employees should remain unchanged under certain circumstances during pendency of proceedings before an arbitrator or a conciliation officer or a Board or of any proceeding before a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute. It further provides that no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. If the conditions of service relate to any matter not connected with the dispute or if the misconduct of the workman is not connected with the dispute the management should seek the approval of the authority concerned and comply with the other conditions mentioned in the proviso to Section 33(2) of the Act. Section 33(3) of the Act provides that in the case of protected workmen the express permission of the authority concerned should be obtained before any such action is taken. Section 33-A of the Act provides for the making of an application before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal for appropriate relief if Section 33 of the Act is contravened. Thus it is seen that the Act is one which is enacted as a social security measure in order to ensure welfare of labour and it falls within one or the other of Entry 22 - Trade Unions; industrial and labour disputes, Entry 23 - social security and social insurance; employment and unemployment and Entry 24 - welfare of labour including conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old age pensions and maternity benefits in the List III of the Seventh Schedule to the Constitution of India. The Act generally applies to all industries irrespective of the religion or caste to which the parties belong. It applies to industries owned by the Central and the State Governments too. Any decision given by the Industrial Tribunal or a Labour Court under the Act is subject to judicial review by the High Court under Article 226 of the Constitution of India and an appeal to this Court under Article 136 of the Constitution of India. The Labour Court, the Industrial Tribunal, the High Court and this Court while dealing

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with matters arising out of the Act have to deal with them objectively. The smooth running of an educational institution depends upon the employment of workmen who are not subjected to victimisation or any other kind of maltreatment. The conditions of service of workmen in all institutions including minority educational institutions have to be protected in the interest of the entire society and any unfair labour practice, such as 'hiring and firing', termination or retrenchment of the service of a workman on irrational grounds will have to be checked. The Act makes provisions in respect of these matters. The Act being a general law for prevention and settlement of industrial disputes cannot be construed as a law which directly interferes with the right of administration of a minority educational institution guaranteed under Article 30(1) of the Constitution of India. The law is not enacted with the object of interfering with any such right. It clearly falls within the observation of Mathew, J. in St. Xavier's College case (supra) that "regular tax measures, economic regulations, social welfare legislation, wage and hour legislation and similar measures may, of course have some effect upon the right under Article 30(1). But where the burden is the same as that borne by others engaged in different forms of activity, the similar impact on the right seems clearly insufficient to constitute an abridgement"."

10. It was further held in paragraph 18 of the said judgment as follows:

Para 18: ".... It has to be borne in mind that these provisions have been conceived and enacted in accordance with the principles accepted by the International Labour Organisation and the United Nations Economic, Social and Cultural Organisation. The International Covenant on Economic, Social and Cultural Rights, 1966 which is a basic document declaring certain specific human rights in addition to proclaiming the right to work as a human right treats equitable conditions of work, prohibition of forced labour, provisio n for adequate remuneration, the right to a limitation of work hours, to rest and leisure, the right to form and join trade unions of one's choice, the right to strike etc. also as human right. The Preamble to our Constitution says that our country is a socialist republic. Article 41 of the Constitution provides that the State shall make effective provision for securing right to work. Article 42 of the Constitution provides that the State shall make provision for securing just and humane conditions of work and for maternity relief. Article 43 of the Constitution states that the State shall endeavour to

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secure by suitable legislation or economic organisation or in any other way to all workers agricultural, industrial or otherwise work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. These rights which are enforced through the several pieces of labour legislation in India have got to be applied to every workman irrespective of the character of the management. Even the management of a minority educational institution has got to respect these rights and implement them. Implementation of these rights involves the obedience to several labour laws including the Act which is under consideration in this case which are brought into force in the country. Due obedience to those laws would assist in the smooth working of the educational institutions and would facilitate proper administration of such educational institutions. If such laws are made inapplicable to minority educational institutions, there is very likelihood of such institutions being subjected to maladministration. Merely because an impartial tribunal is entrusted with the duty of resolving disputes relating to employment, unemployment, security of work and other conditions of workmen it cannot be said that the right guaranteed under Article 30(1) of the Constitution of India is violated. If a creditor of a minority educational institution or a contractor who has built the building of such institution is permitted to file a suit for recovery of the money or damages as the case may be due to him against such institution and to bring the properties of such institution to sale to realise the decretal amount due under the decree passed in such suit is Article 30(1) violated? Certainly not. Similarly the right guaranteed under Article 30(1) of the Constitution is not violated, if a minority school is ordered to be closed when an epidemic breaks out in the neighbourhood, if a minority school building is ordered to be pulled down when it is constructed contrary to town planning law or if a decree for possession is passed in favour of the true owner of the land when a school is built on a land which is not owned by the management of a minority school. In the same way if a dispute is raised by an employee against the management of a minority educational institution such dispute will have necessarily to be resolved by providing appropriate machinery for that purpose. Laws are now passed by all the civilised countries providing for such a machinery. The Act with which we are concerned in this case is an Act which has been brought into force for resolving such industrial disputes. Sections 10, 11-A, 12 and 33 of the Act cannot,

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therefore, be construed as interfering with the right guaranteed under Article 30(1) of the Constitution of India. Similarly, Section 9-A of the Act, which requires the management to issue a notice in accordance with the said provision in order to make changes in the conditions of service which may include changes in the hours of work, leave rules, introduction of new rules of discipline etc., cannot be considered as violative of the right guaranteed under Article 30(1) of the Constitution of India....” [Emphasis added]

Therefore, it is too late for the petitioner to state that the provisions of the I.D. Act will not apply to non-minority institution when it is made applicable even to a minority institution, which enjoys the protection under Article 30(1) of the Constitution of India and the provisions of the I. D. Act were held to be regulatory in nature.

11. However, the learned Senior Counsel appearing for the petitioner submitted that the Private Schools Act insofar it has received the assent of the President and in respect of the Private Schools, it is a complete Code by itself and Section 28 of the Private Schools Act has an over-riding effect. Section 28 of the private Schools Act reads as follows:

“28. Chapter to have overriding effect.-

(1) This Chapter or any rule providing for all or any of the matters specified or any of the matters specified in this Chapter or any order made in relation to any such matter shall have effect notwithstanding -

(a) anything contained in any-

(i) other law for the time being in force, or

(ii) award, agreement or contract of service, whether such award, agreement or contract of service was made before or after the date of commencement of this Act, or

(iii) judgment, decree or order of court, Tribunal or authority, or

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(b) that the rules relating to recognition of, or payment of grant, to private schools,

had or have no statutory force:

Provided that where, under any such award, agreement, contract of service or otherwise, any teacher or other person employed in any private school is entitled to benefits in respect of any matter which are more favourable to him than those to which he will be entitled under this Chapter, such teacher or other person shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Chapter.

(2) Nothing contained in this Chapter shall be construed as precluding any such teacher or other person from entering into an agreement for granting him rights or privileges in respect of any matter which are more favourable to him than those to which he would be entitled under this Chapter."

12. A reading of the above provision clearly shows that it is not an absolute bar and parties are allowed to have better terms even de hors under provisions of the Private Schools Act. In fact, the Supreme Court in the decision reported in 1988 (4) SCC 42 [Miss A. Sundarambal v. Government of Goa, Daman and Diu and others] has categorically held that a teaching staff working in educational institutions alone are not covered by the provisions of the I.D. Act. Therefore, prima facie, the Labour Court has power to deal with the dispute.

13. The Industrial Disputes Act is enacted by the Central Legislative Assembly in terms of its legislature power which is now referable to Entry 24 of List III of Schedule VII of the Constitution. The Private Schools Act is referable to Entry 25 of List III under Schedule VII. The legislature entries of the two enactments are different and they operate under different fields. Hence, the question of any repugnancy between the two enactments does not arise.

14. The other question remains to be answered is that whether Article 254(2) of the Constitution will apply to the present case. The Supreme Court in its decision reported in 1981 (1) SCC 315 [Life Insurance Corporation of India v. D.J. Bahadur and others] has held that the I.D. Act is a special law with reference to all industrial disputes and therefore, even the LIC Act cannot have an overriding effect over the I.D. Act. If there is any doubt as to

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whether a law is a special law or general law, it will have to be seen from the object with which the same was enacted. Same law can be special and general depending upon the context. The following passages found in paragraphs 52 and 53 in the LIC case (cited supra) may be usefully extracted below:

Para 52: "In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity, not absolutes - so too in life. The ID Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infrastructure for investigation into, solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the ID Act has one special mission - the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workmen, the ID Act is a special statute, and the LIC Act does not speak at all with specific reference to workmen. On the other hand, its powers relate to the general aspects of nationalisation, of management when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and the employer as such, are beyond the orbit of and have no specific or special place in the scheme of the LIC Act. And whenever there was a dispute between workmen and management the ID Act mechanism was resorted to.

Para 53: "What are we confronted with in the present case, so that I may determine as between the two enactments which is the special? The only subject which has led to this litigation and which is the bone of contention between the parties is an industrial dispute between the Corporation and its workmen qua workmen. If we refuse to be obfuscated by legal abracadabra and see plainly what is so obvious, the conclusion that flows, in the wake of the study I have made, is that vis-a-vis "industrial disputes" at the termination of the settlement as

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between the workmen and the Corporation, the ID Act is a special legislation and the LIC Act a general legislation. Likewise, when compensation on nationalisation is the question, the LIC Act is the special statute. An application of the generalia maxim as expounded by English textbooks and decisions leaves us in no doubt that the ID Act being special law, prevails over the LIC Act which is but general law."

15. To the other question that Matriculation Code will not apply to the Private Schools Act, the learned Senior Counsel submitted that the judgment of this Court reported in 2002 W.L.R. 688 (cited supra) holding that the Matriculation Code alone will apply to the exclusion of the Private Schools Act, has been referred to the decision by a Division Bench. Therefore, it is not final and binding. The learned Senior Counsel may be correct in stating that the Matriculation Code is based on administrative orders of the Government and does not have a force of law and if any orders are passed by the appellate authorities under the Act, to what extent, the order will be binding on the School Management is a moot question. In fact, the Matriculation Code is similar to that of the earlier Madras Educational Rules [for short,'MER'] which are only standing instructions of the Education Department. It is necessary to trace out the history behind the enactment of Private Schools Act as well as the Code of Matriculation Schools for better appreciation of the contentions raised in this writ petition.

16. The Madras Educational Rules (MER), more particularly Rule 13, provided for an Appeal by an aggrieved teacher against his / her termination. One such teacher - Kum. Regina - filed an appeal and she was subsequently directed to be reinstated. The School authorities took up the matter on appeal and finally the Supreme Court vide its decision reported in A.I.R. 1971 - SC - 1920 [Kumari Regina v. St. Alosiyas Higher Elementary School and others] held that these rules have no statutory force. The Supreme Court further observed that the appeal is incompetent and the teachers are governed by contracts and the relationship between the teachers and the management is that of master and servant only. However, these rules were considered to be executive instructions, not backed by any statute. Therefore, after the judgment of the Supreme Court in Kumari Regina's case, the Government felt that without a proper statutory backing, mere contracts and agreement will not provide relief to teachers even if they were dealt with arbitrarily by their managements.

17. Finding that there are numerous educational institutions without any authority coming up, the Tamil Nadu Government enacted the Madras Private Educational Institutions (Regulations) Act, 1966 and the said Act received the President's assent on 19.01.1967. Initially Section 28 of the said Act was struck down by the Madras

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High Court vide its decision reported in AIR 1972 Madras 123 [A.N.Parasuraman v. State of Tamil Nadu]. Subsequently, the entire Act was held to be bad in law by the Supreme Court reported in 1989 (4) SCC 683 [A.N.Parasuraman v. State of Tamil Nadu]. The slip shod attempt by the Government will clearly show that they were not sincere in bringing a fruitful law in this area.

18. Even after twenty years after the Constitution came into force, the sufferings undergone by the teachers were manifold. Reduced pay, forced resignations and blatant 'hire and fire' policies were pursued by school managements. After protracted struggle by the School Teachers, the Government came up with an idea of a special legislation for protecting them from being arbitrarily dealt with by their managements. Thus, the Tamil Nadu Legislature passed the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (Tamil Nadu Act 29 of 1974) with a view to regulation the recognised schools in the State of Tamil Nadu. It received the assent of the President of India on 20.6.1974. By virtue of the powers conferred by Section 56, the Tamil Nadu Government had framed Rules called the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. These Rules came into force with effect from 01.12.1974.

19. By virtue of Section 1(3), the Act is applicable to all private schools. The term 'private schools' as defined under Section 2(7) of the Act is as follows:

> "Private Schools" means a pre-primary, primary, middle or High School or Higher Secondary School or any other institution imparting education or training established and administered or maintained by any person or body of persons and recognised by the competent authority under this Act, but does not include a school or an institution.
>
> (a) imparting technical or professional education;
> (b) established and administered or maintained by the Central Government or the State Government or any local authority;
> (c) maintained and approved by or affiliated to any University established by law; or
> (d) giving, providing or imparting religious instruction alone, but not any other instructions."
>
> [Emphasis added]

20. Under the provisions of the Private Schools Act, every 'private school' according to Chapter IV is bound to constitute a 'School Committee' (Section 15). The School Committee will consist of the Headmaster, 3 Senior teachers, representatives of the Parent – Teacher Association and one senior non-teaching staff beside the nominees of the management. The said School Committee is empowered to deal with the administration including the power to take

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disciplinary action (Section 18). Under Section 19 service conditions are to be framed by the Government.

21. In case of disciplinary action, prior approval of the competent authority has been made mandatory and against dismissal for the teachers, a First Appeal is provided to an Appellate Authority and thereafter a Second Appeal to the Second Appellate Authority, which is a Judicial Tribunal. Further, there are restrictions on the part of the private schools from suspending their teachers for an indefinite period and no suspension can last beyond a period of four months. Under Section 28 overriding powers are given over any other law for the time being in force and / or any award or agreement or contract of service. Under Section 34 of the Private Schools Act, if any school management has neglected to discharge its duties and functions, then Government can take over the management of such schools.

22. The Matriculation Schools in the State of Tamil Nadu were initially affiliated to the University of Madras created under the Madras University Act, 1923. Subsequently, when Madurai – Kamaraj University was formed, such of the Matriculation Schools operating in Madurai Area and which were originally under affiliation to the Madras University got their affiliation transferred to the Madurai – Kamaraj University. The Matriculation Schools which were originally affiliated to the Madras University and Madurai – Kamaraj University were thus excluded by Section 2(7)(c) and hence the provisions of the Private Schools Act were not available to teachers.

23. Subsequently, in the first instance by an Ordinance in 1975 (w.e.f. 21.11.1975) and followed by the President's Act in the year 1976, the Tamil Nadu Private Colleges (Regulation) Act, 1976 was enacted and rules were also framed thereunder. During July 1976, the Syndicate of the Madras University, by a resolution, decided to drop the affiliation of Matriculation Schools as also from conducting the Matriculation Examinations.

24. Immediately, thereafter, instead of extending the Private Schools Act and the Rules framed thereunder, the Government of Tamil Nadu during December 1976 transferred the control of the Matriculation School to a board with the Director of School Education as its Chairman. This position was affirmed by issuing a G.O. No. 2816, Education, dated 29.12.1976. Subsequently, on the basis of the suggestion of the Director of School Education the Government of Tamil Nadu ordered the constitution of the Board of Matriculation Schools – vide G.O. Ms. No. 1720 dated 25.7.1977 by which they formed the Board and defined terms and conditions and functions of the Board. Thereafter, for the Inspectorate of Matriculation Schools under the control and supervision of the Director of School Education – vide G.O. Ms. No. 2678, Education, dated 29.12.1977 necessary staff and infrastructure was provided.

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25. The so-called Code applicable to the Matriculation Schools and recognised by the Director of School Education came into force with effect from 01.6.1978. The Director of School Education purporting to be the Chairman of the Board of Matriculation Schools at a meeting held on 18.12.1978 decided that a 'Code of Regulations' was to be compiled and for this purpose, appointed an eight-member sub-committee and the draft code was later circulated to all Matriculation Schools under the name and style "Code of Regulations for Matriculation Schools in Tamil Nadu."

26. Consequent on the coming into force of 10+2+3 pattern of education from June 1978, Universities in Tamil Nadu abolished the Pre-University Course from June 1979. The +2 course called as Higher Secondary Course was attached to the High Schools and such schools which were permitted to have the +2 course were later upgraded as Higher Secondary Schools. After the introduction of the +2 scheme, the Matriculation Schools, by a Government's order dated 22.3.1978 were allowed to follow the Higher Secondary School Course pattern and the syllabus and the curriculam adopted by them are the same. The State Board and the Matriculation Board students take the very same examination conducted by the Director of Government Examinations.

27. The Matriculation Schools were allowed to retain the original structure and are permitted to levy fees for the Matriculation Courses. The Matriculation Schools can also adopt and establish their own curriculam except for the last two years where they will have to send their students for a Public Examination. The Public Examination which is called Matriculation Examination which was originally conducted by the University is now being conducted at the end of the 10th Standard by the Director of Government Examinations. The medium of instruction in the Matriculation Schools is English.

28. Thus in all respects, the Matriculation Schools are nothing but 'Private Schools' within the meaning of Section 2(7) of the Private Schools Act and these Matriculation Schools are also recognised by the same competent authority constituted under the provisions of the Private Schools Act.

29. In view of their dis-affiliation by the Universities, the exemption granted under Section 2(7)(c) of the Private Schools Act, no longer applies and the Matriculation Schools are therefore covered by the provisions of the Private Schools Act, 1973 and the Rules framed thereunder. However, instead of applying the provisions of the Private Schools Act, the Director of School Education, without authority of law, are now applying the so-called "Code of Regulations for Matriculation Schools". But these Regulations are not referrable to the provisions of the Private Schools Act and the Rules framed thereunder and remain as more consolidated executive instructions having no force of law.

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30. No one can understand the real intention of the Government in creating a Private Schools Act in respect of certain schools and in respect of Matriculation Schools evolving a Code with executive instructions. A perusal of the Code of Matriculation Schools prepared by the Director of School Education and accepted by the Government will clearly show that most of the provisions, were word by word, borrowed from the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 as well as the Rules framed thereunder. The Appendix (7) of the Code was literally copied from the Code of Conduct prescribed as Annexure (2) under Rule 16 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. In the same way, Annexures 1 to 3 and 6 were also copies from the said rules only. Thus, the intention of the Government is to maintain a facade of providing similar service conditions, but in essence to rob the teachers working in the Matriculation Schools a statutory cover and continue them on contractual terms.

31. However, it is for the Division Bench to determine the legality of the Matriculation Code vis-a-vi the Private Schools Act application to the teachers and other persons employed in a Private School. Even if the Private School Act is made applicable, that has not edged out the employees having recourse to more than one forum, viz., the Private Schools Act or I. D. Act as has already been held in the S.Chattanatha Karayalar College of Pharmacy case (cited supra).

32. There is yet another difficulty for the petitioner to agitate the lack of jurisdiction of the Labour Court in the Industrial Dispute raised by the second respondent. Even if the Division Bench holds that the Private Schools Act will apply, then in the absence of the Government prescribing competent authorities and appellate authorities in terms of the Private Schools Act, no person working in a Matriculation School can avail the provisions of the Private Schools Act. In fact, Section 2(2) of the Private Schools Act defines competent authority, which reads as follows:

> "Competent authority" means any authority, officer or person authorised by the Government, by notification, to perform the functions of the competent authority under this Act for such area or in relation to such class of private schools, as may be specified in the notification."

33. Under the Private Schools Act, different competent authorities are prescribed for different provisions and correspondingly in terms of Section 41 of the Private Schools Act, appellate authorities have also been prescribed. But insofar as Matriculation Schools are concerned, in the absence of the State prescribing competent authorities and appellate authorities, the second respondent will have no forum to ventilate his grievance.

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34. The learned Senior Counsel appearing for the petitioner argued that, that cannot be an obstacle in deciding the application of the Act. When a similar situation came up for consideration before the Supreme Court in the absence of rule providing for competent authorities in respect of Engineering Colleges under the Tamil Nadu Private Colleges (Regulation) Act, the Supreme Court in the decision reported in 1995 Supp (2) SCC 348 [P.Kasilingam and others v. P.S.G. College of Technology and others] held that if the Rules are not framed prescribing competent authorities, the Act will become unworkable. Paragraphs 19 and 20 of the said judgment may be usefully extracted below:

Para 19: "We will first deal with the contention urged by Shri Rao based on the provisions of the Act and the Rules. It is no doubt true that in view of clause (3) of Section 1 the Act applies to all private colleges. The expression "college" is, however, not defined in the Act. The expression "private college" is defined in clause (8) of Section 2 which can, in the absence of any indication of a contrary intention, cover all colleges including professional and technical colleges. An indication about such an intention is, however, given in the Rules wherein the expression "college" has been defined in Rule 2(b) to mean and include Arts and Science College, Teachers' Training College, Physical Education College, Oriental College, School of Institute of Social Work and Music College. While enumerating the various types of colleges in Rule 2(b) the rule-making authority has deliberately refrained from including professional and technical colleges in the said definition. It has been urged that in Rule 2 (b) the expression "means and includes" has been used which indicates that the definition is inclusive in nature and also covers categories which are not expressly mentioned therein. We are unable to agree. A particular expression is often defined by the Legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition". (See : Gough v. Gough (1891) 2 QB 665; Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court (1990) 3 SCC 682 at p. 717. The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to

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these words or expressions". (See : Dilworth v. Commissioner of Stamps 1899 AC 99 at pp. 105-106 (Lord Watson); Mahalakshmi Oil Mills v. State of A.P. (1989) 1 SCC 164 at p. 169. The use of the words "means and includes" in Rule 2(b) would, therefore, suggest that the definition of 'college' is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time. As noticed earlier the Grants-in-Aid Code contains provisions which, in many respects, cover the same field as is covered by the Act and the Rules. The Director of Technical Education has been entrusted with the functions of proper implementation of those provisions. There is nothing to show that the said arrangement was not working satisfactorily so as to be replaced by the system sought to be introduced by the Act and the Rules. Rule 2(d), on the other hand, gives an indication that there was no intention to disturb the existing arrangement regarding private engineering colleges because in that rule the expression 'Director' is defined to mean the Director of Collegiate Education. The Director of Technical Education is not included in the said definition indicating that the institutions which are under the control of Directorate of College Education only are to be covered by the Act and the Rules and technical educational institutions in the State of Tamil Nadu which are controlled by the Director of Technical Education are not so covered.

Para 20: "The Rules have been made in exercise of the power conferred by Section 53 of the Act. Under Section 54(2) of the Act every rule made under the Act is required to be placed on the table of both Houses of the Legislature as soon as possible after it is made. It is accepted principle of statutory construction that "rules made under a statute are a legitimate aid to construction of the statute as contemporanea expositio " (See : Craies on Statute Law , 7th Edn., pp. 157-158; Tata Engineering and Locomotive Co. Ltd. v. Gram Panchayat, Pimpri Waghere (1977) 1 SCR 306, at p. 317 : (AIR 1976 SC 2463 at p. 2467). Rule 2(b) and Rule 2(d) defining the expression 'College' and

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> 'Director' can, therefore, be taken into consideration as contemporanea expositio for construing the expression "private college" in Section 2(8) of the Act. Moreover, the Act and the Rules form part of a composite scheme. Many of the provisions of the Act can be put into operation only after the relevant provision or form is prescribed in the Rules. In the absence of the Rules the Act cannot be enforced. If it is held that Rules do not apply to technical educational institutions the provisions of the Act cannot be enforced in respect of such institutions. There is, therefore, no escape from the conclusion that professional and technical educational institutions are excluded from the ambit of the Act and the High Court has rightly taken the said view. Since we agree with the view of the High Court that professional and technical educational institutions are not covered by the Act and the Rules, we do not consider it necessary to go into the question whether the provisions of the Act fall within the ambit of Entry 25 of List III and do not relate to Entry 66 of List I."

35. Therefore, in the absence of any forum to be provided for the second respondent, it is too dangerous to decide such issues purely on academic basis. As has already been held, the I.D. Act applies to educational institutions including the petitioner School and the first respondent Labour Court has complete jurisdiction to deal with the Industrial Dispute raised by the second respondent workman.

36. For the foregoing reasons, the writ petition filed by the School Management for the second round is misconceived and devoid of merits. There are no infirmities or illegalities in the preliminary order passed by the Labour Court. Accordingly, the writ petition stands dismissed. However, there will be no order as to costs. Connected Miscellaneous Petition is closed. Since it is a dispute of the year 2005 and non-employment of the workman is from the year 2003, the Labour Court is directed to proceed with the dispute on merits expeditiously and in any event, complete the dispute within a period of three months from the date of receipt of a copy of this order as required under Section 10 of the I. D. Act.

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To

1.The Principal Labour Court
High Court Campus
Chennai - 104
+ One cc to Mr. S. Ravichandran, Advocate SR 69925
KSJ (co)
sg 03/12/07

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